

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**ANNE BRUMBAUGH, GARY L. HARMON and
RANDY K. GRIFFIN,**

Plaintiffs,

v.

**WAVE SYSTEMS CORPORATION, STEVEN K.
SPRAGUE and GERARD T. FEENEY,**

Defendants.

**CIVIL ACTION
NO. 04-30022-MAP**

**LEAD PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT, CONDITIONAL CERTIFICATION OF CLASS, APPROVAL OF
NOTICE PLAN, AND SETTING OF SETTLEMENT FAIRNESS HEARING**

Pursuant to the Federal Rules of Civil Procedure, and in accordance with Local Rule 7.1, Lead Plaintiffs hereby move this Honorable Court to preliminarily approve the proposed settlement with Defendants and conditionally certify a settlement class pursuant to Fed. R. Civ. P. 23. Specifically, the Motion seeks an order (i) granting preliminary approval of the settlement, (ii) conditionally certifying the Class, (iii) approving the manner of giving notice of the settlement to the proposed Class, and (iv) setting a date for the Settlement Fairness Hearing. In further support for this Motion, Lead Plaintiffs refer the Court to the Memorandum in Support of Lead Plaintiffs' Motion for Preliminary Approval of Settlement, Conditional Certification of Class, Approval of Notice Plan, and Setting of Settlement Fairness Hearing filed herewith.

In addition, this Motion provides the following generalized procedural schedule, which the parties respectfully request that the Court adopt:

- Notice and Proof of Claim and Release Form to be disseminated within 15 calendar days following the execution of the Proposed Preliminary Approval Order (Proposed Preliminary Approval Order, ¶6) (the “Notice Date”);
- Summary Notice to be published within 10 calendar days after the Notice Date (Proposed Preliminary Approval Order, ¶7);
- Proof of Claim and Release Forms to be submitted within 120 calendar days after the Notice Date (Proposed Preliminary Approval Order, ¶9(a)); and
- File and serve any comments or objections, or requests for exclusion within 50 calendar days after the Notice Date (Proposed Preliminary Approval Order, ¶¶10, 12).

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Undersigned counsel certifies that they conferred with Defendants’ Counsel, and the Defendants assent to the relief sought by this Motion.

Dated: October 4, 2006

Respectfully submitted,

GILMAN AND PASTOR, LLP

By: /s/ David Pastor
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Lead Counsel for Lead Plaintiffs

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 4, 2006.

/s/ David Pastor